

1994

# State of Utah v. Steven Lynn Muir : Brief of Appellant

Utah Court of Appeals

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Utah Attorney General.

Douglas D. Terry.

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DOCKET NO. 94-1102-CA

THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff and Appellee

vs.

STEVEN LYNN MUIR,

Defendant and Appellant.

Case No. 940703-CA

BRIEF OF APPELLANT

APPEAL FROM A SENTENCE AND COMMITMENT IN THE FIFTH JUDICIAL  
DISTRICT, IN AND FOR WASHINGTON COUNTY,  
STATE OF UTAH, THE HONORABLE JAMES L. SHUMATE, PRESIDING

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FILED

FEB 15 1995

COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,	)	
Plaintiff and Appellee,	)	
vs.	)	
STEVEN LYNN MUIR,	)	Case No. 940703-CA
Defendant and Appellant.	)	

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BRIEF OF APPELLANT

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APPELLATE JURISDICTION

Jurisdiction to hear this appeal is conferred upon the above-entitled Court by Section 78-2a-3(2)(f), Utah Code Annotated, 1953, as amended.

STATEMENT OF ISSUES

1. Did the trial court improperly rely upon inaccurate information contained in the presentence investigation report in sentencing Defendant to a prison commitment?
2. Did the trial court abuse its discretion in sentencing Defendant?
3. Was the Defendant denied his right to due process and equal protection under the laws pursuant to constitutions of the United States and the State of Utah?
4. Was the Defendant denied the effective assistance of counsel?

## CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

### **Fifth Amendment to the Constitution of the United States.**

No person. . . shall be . . . deprived of life, liberty, or property, without due process of law . . . .

### **Fourteenth Amendment to the Constitution of the United States**

. . . nor shall any state deprive any person of life, liberty, or property, without due process of law . . . .

### **Article I, Section 7, Constitution of the State of Utah.**

No person shall be deprived of life, liberty or property, without due process of law.

### **Section 76-3-401, Utah Code Annotated, 1953 as amended.**

(2) A court shall consider the gravity and circumstances of the offenses and the history, character, and rehabilitative needs of the defendant in determining whether to impose consecutive sentences.

## STATEMENT OF THE CASE

Defendant plead guilty to the charges of Count I: Theft by Receiving Stolen Property, a 2nd Degree Felony; Count II: Failure to Respond to an Officer's signal to Stop, a 3rd Degree Felony; Count III: Attempted Theft, a Class A Misdemeanor; and Count IV: No Operator's Security on Vehicle, a Class B Misdemeanor. Following a Presentence Investigation Report and a 60-day diagnostic evaluation, Defendant was sentenced to serve a term of not less than one year and not more than 15 years in the Utah State Prison, with no fine being imposed.

## ARGUMENT

At the sentencing hearing, the Court relied upon information contained in the

presentence investigation report prepared by the Department of Adult Probation and Parole. That report contained information on page 7, under the heading of Prior Record, that Defendant had been convicted of a 2nd Degree Motor Theft Felony in North Glenwood, Colorado on or about March 29, 1993. After the sentencing hearing, Defendant informed his counsel that the information contained in the Presentence Investigation Report with respect to the prior felony conviction was in error and that the felony had been reduced to a misdemeanor "Joy Riding" charge pursuant to a plea agreement. Defendant claims that he was not afforded the effective assistance of counsel because counsel for Defendant did not bring the error to the attention of the court at the sentencing hearing. Defendant also claims that he was somehow coerced by his counsel into entering into the plea agreement, or at least was ill advised by his counsel to enter into the plea agreement.

Counsel for Defendant has made a conscientious examination of the record and his conduct with respect to his representation of the Defendant and cannot, in good faith, present an argument on appeal which would not be frivolous, with the exception of Defendant's claim of ineffective assistance of counsel, which counsel for Defendant submits to the Court of Appeals for its determination. Therefore, counsel must submit this brief pursuant to Anders v. California, 386 U.S. 738, 18 L.Ed 2d 493, 87 S.Ct. 1396 (1967), and State v. Clayton, 639 P.2d 1968 (Utah 1981).

### CONCLUSION

Appellant respectfully requests that the Court examine the record to determine if grounds exist to remand the case for the purpose of vacating the Court's sentence and ordering the trial court to reconsider the information contained in the Presentence

Investigation Report and sentence the Defendant accordingly.

DATED this 15 day February, 1995

15/  
Douglas D. Terry  
Attorney at Law

#### MAILING CERTIFICATE

I do hereby certify that on this 15 day of February, 1995 I did personally mail four true and correct copies of the above and foregoing document to:

Jan Graham  
Utah Attorney General  
236 State Capitol Building  
Salt Lake City, Utah 84114

Steven Lynn Muir  
Utah State Prison  
P. O. Box 250  
Draper, Utah 84020

15/  
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